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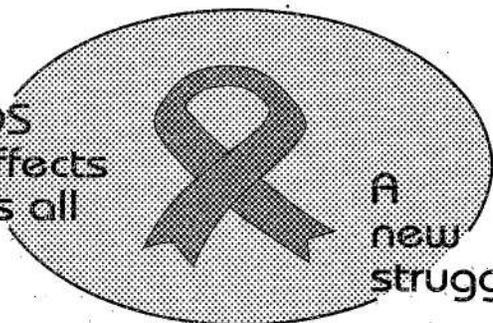
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PRETORIA, 15 SEPTEMBER 2000

No. 21546

**We all have the power to prevent AIDS**

AIDS  
affects  
us all



A  
new  
struggle

Prevention is the cure

**AIDS  
HELPLINE**

**0800 012 322**

DEPARTMENT OF HEALTH

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## GENERAL NOTICES

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### NOTICE 3106 OF 2000

#### DEPARTMENT OF TRADE AND INDUSTRY

#### CONSUMER AFFAIRS ACT (UNFAIR BUSINESS PRACTICES), 1988

I, Alexander Erwin, Minister of Trade and Industry, do hereby, in terms of section 10(3) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), publish the report of the Consumer Affairs Committee on the result of an investigation made by the Committee pursuant to General Notice 1204 of 2000 as published in Government Gazette No. 21133 dated 5 May 2000, as set out in the Schedule.

A ERWIN  
MINISTER OF TRADE AND INDUSTRY

SCHEDULE

## **CONSUMER AFFAIRS COMMITTEE**

### **REPORT IN TERMS OF SECTION 10(1) OF THE CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988 (ACT No. 71 OF 1988)**

#### **Report No. 79**

#### **METRO FINANCIAL SERVICES LTD, C HOLSTHAUZEN AND Z BESWICK**

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## 1. The Consumer Affairs Committee - a brief background

The Consumer Affairs Committee (the Committee) administers the Consumer Affairs (Harmful Business Practices) Act, 71 of 1988 (the Act). It is a statutory committee, resorts under the Department of Trade and Industry and reports to the Minister of Trade and Industry (the Minister). The purpose of the Act is to provide for the prohibition or control of unfair business practices.

An "unfair business practice" is defined in the Act as any business practice which, directly or indirectly, has or is likely to have the effect of harming the relations between businesses and consumers, unreasonably prejudicing any consumer, deceiving any consumer or unfairly affecting any consumer. The definition makes no distinction between unfair business practices that come about by design and those that come about intentionally.

The Committee has wide investigative powers in terms of the Act. The Committee is empowered to undertake two types of investigations, namely formal and informal investigations. Informal investigations are undertaken in terms of section 4(1)(c) of the Act and formal investigations are undertaken in terms of sections 8(1)(a) and 8(1)(b). The Committee is not obliged to undertake a section 4(1)(c) investigation into the business practices of a particular entity or individuals before it embarks on a section 8(1)(a) investigation. This route is followed when the Committee has reason to believe that it has sufficient information at its disposal to forego the section 4(1)(c) investigation.

Notice of formal investigations in terms of the Act [section 8(1)(a) and section 8(1)(b)] are published in the Government Gazette. Should the Committee, after an investigation, find that an unfair business practice exists, it recommends corrective action by the Minister to ensure the discontinuance of the unfair business practice. The powers of the Minister are set out in section 12 of the Act. Orders of the Minister are published in the Government Gazette. A contravention of an order by the Minister is a criminal offence, punishable by a fine of R200 000 or five years imprisonment or both the fine and the imprisonment.

The focal point of a section 8(1)(a) investigation is any unfair business practice that exists or may come into existence and which involves a particular individual or individuals or business entity. The subsequent order of the Minister will be applicable to the particular individual or individuals or business entity. The focus of a section 8(1)(b) investigation is any business practice in general which is commonly applied for the purposes of or in connection with the creation or maintenance of unfair business practices. The subsequent order of the Minister will be applicable to all individuals and entities.

## 2. The complaint

On 23 March 2000 the Committee received an enquiry from a consumer, Mr "X" of Cape Town. He wrote:

**"Please let me know if Metro Cash loans situated in Springs JHB is associated with Micro Lenders. I've Bought shares by them with a very bad uncertainty reply's back to me again with my payments about my shares. Please let me know again".**

He attached a number of documents to his enquiry. The entity was Metro Cash Loans Ltd (Metro, 99/06083/06). Messrs C Holsthauzen (Holsthauzen, ID701002 5254 08 9) were the chairman and Z Beswick (Beswick, ID670920 5068 08 3) the managing director of Metro respectively. The head office of Metro is in Springs and it had regional offices in George and Pietermaritzburg. The regional office in Pietermaritzburg was closed down in May 2000. Towards the end of March 2000 Metro had 20 micro cash loan branches in Gauteng, KwaZulu/Natal, Mapumalanga and the Western Cape. Since the end of March 2000 a number of these branches were closed down.

### **3. Background**

Holsthauzen was the only member of Zuchiro Financial Advisors CC (Zuchiro), trading as Metro Investments. Zuchiro was also involved in the micro lending industry and accepted investments or loans from the public. It appeared that Holsthauzen obtained loans from investors in his personal capacity whilst operating Zuchiro. Investors in Zuchiro and those that lent money to Holsthauzen received a return of 10 per cent per month.

Zuchiro was placed under voluntary liquidation during February 1999 and, according to Holsthauzen, approximately R4.1 million was still owed to the investors by Zuchiro and himself. It is not known what amount was owed by Zuchiro and what was owed by Holsthauzen. When Metro Cash Loans (Pty) Ltd was registered on 23 March 1999, Holsthauzen accepted the liability to repay the loans advanced by investors to Zuchiro and himself. Metro Cash Loans (Pty) Ltd or Holsthauzen had no legal obligation to accept liability for the repayment of the loans advanced to Zuchiro, but Holsthauzen claimed that he had a moral obligation to do so. It appears that he did not regard himself and Zuchiro, and later Metro, as separate legal entities.

### **4. The initial enquiry**

Investigating officials of the Committee visited the offices of Metro in Springs on 29 March 2000 and held discussions with Beswick. During May 2000 officials visited the offices of Metro on three occasions. The documents obtained from the complainant were discussed with Bezwick on 29 March 2000.

Metro Cash Loans (Pty) Ltd initially took money in the form of loans from the public. It was advised by its legal representatives that it might contravene the Banks Act. The directors of Metro Cash Loans (Pty) Ltd thus resolved to convert Metro Cash Loans (Pty) Ltd to Metro Cash Loans Ltd (Metro) and issue shares to the public. The issued share capital of Metro is 25 million shares of one cent each. It appears from documents which the Committee received from "X" that the management of Metro took up 13 million shares and that the remaining 12 million shares were to be taken up by the public at R1 each. It was later established that the 25 million shares in Metro were all taken up by Holsthauzen at one cent each. He thus paid R250 000 for the 25 million shares. The officials could not establish whether Holsthauzen paid for the shares from his own personal funds or whether the R250 000 was paid from the loans advanced to him in his personal capacity by investors.

Holsthauzen then "donated" 100 shares each to the following six persons: Beswick, Ms T Oosthuizen, who was responsible for the cash loans offices, Ms R T Strydom, secretary of Metro and who was also responsible for the debits of the cash book, Mr N Meyer of D J Meyer and Associates and at that time bookkeeper of Metro, Mr G Holsthauzen, who was responsible for the "maintenance" of the cash loans offices and Mr B Seaward who left the company towards the end of January 2000 and who held the title "Regional Managing Director".

A Metro share certificate showed that Holsthauzen held 24 999 400 shares. During January 2000 "X" bought 40 000 shares at R1 each.

##### 5. The offer of shares to the public

Metro advertised extensively in newspapers and magazines. Advertisements were found in the following newspapers: Advertiser, Beeld, Citizen, City Vision, Caxtons Limited (Northcliff Melville Times, North Eastern Tribune, Rosebank Killarney Gazette, Sandton Chronicle, Randburg Sun, Roodepoort Record and Midrand Reporter), Landbou Weekblad, Finansies & Tegniek, Finance Week, Huisgenoot, Pretoria News, Sowetan and the Star. The advertisements were placed between 21 June 1999 and 2 February 2000. From April 1999 to December 1999 Metro paid R105 397.11 towards advertising costs. It was later affirmed by Bezwick that the placing of the advertisements were discontinued because Metro experienced cash flow problems. Metro advertised an "opportunity" to earn 5 per cent per month on investments placed with it. A copy of a typical advertisement is to be found on the following page.

Consumers or potential investors who were interested in the opportunity had to call one of the names mentioned in the advertisements. Once they expressed their interest to buy shares a number of documents, such as those that "X" had, including an "Application for Ordinary Shares", were sent to them.

A list of shareholders as at 28 February 2000 and obtained from Metro contained 156 surnames. Some surnames appeared more than once which implied that less than 156 consumers bought Metro shares as at 28 February 2000. Next to the names of a number of shareholders were the words "Pd Out". According to Bezwick the shares of these shareholders were bought back. The shareholders on the list paid R7 498 500 for an equal number of shares. These shareholders effectively bought their shares from Holsthauzen, and not from Metro. Shareholders were promised a "monthly dividend".

## LOOK AT THIS AND DECIDE FOR YOURSELF!

*Are you going on retirement??*

*Have you been retrenched??*

## WE CAN HELP YOU MAKE PROVISION FOR THOSE UNEXPECTED DAYS

For example buy R40 000 shares now and get R2 000,00 per month for the time period your shares are kept

THESE SHARES CAN BE SOLD FOR THE SAME AMOUNT YOU BOUGHT THEM FOR.

For more information phone Zane Beswick at  
(011) 815-2899 / 082 887 3916 or  
Contact Zelda Els at (011) 815-2899 /  
082 902 8564

|                                     |                   |
|-------------------------------------|-------------------|
| e.g. 12 Months x R2 000.00          |                   |
|                                     | = R24 000.00      |
|                                     | - 12.5% (TAX)     |
| <b>TOTAL</b>                        | <b>R21 000.00</b> |
| + Share value                       | R40 000.00        |
| <b>Total value after 12 months:</b> | <b>R61 000.00</b> |

Limited amount of shares available

\*\*\*\*\*

## 6. The monthly dividend

The payment of dividends on a monthly basis commenced during April 1999 and was discontinued during February 2000. On 13 January 2000 Metro wrote to "X". The following is a quote from this letter:

**"Firstly we would like to wish you a very prosperous New Year. We would also like to take this opportunity of welcoming you to the Metro Cash Loans Ltd Shareholders Club.**

**You as a Shareholder make it all possible for us.**

**On a bit of a serious note, we would like to notify you when you can expect your dividends. Dividends are paid on the following dates:- 1<sup>st</sup> - 7<sup>th</sup> February 2000. Thereafter, between the 1<sup>st</sup> and 7<sup>th</sup> of each following month.**

**Service excellence is the most sought after commodity, which we at Metro can offer. Should you have any enquiries, please do not hesitate to contact the undersigned".**

**On 8 March 2000 Metro sent a circular to its shareholders. Included in the circular was the following statement:**

**"Metro Cash Loans Ltd have been advised by our legal representatives to cease paying monthly dividends with immediate effect, due to the fact that the Bank Act and Company Act states that dividends are to be paid (sic) on a quarterly basis. It is therefore illegal for us to pay dividends every month. Please expect your next payment on the following date:- 7<sup>th</sup> April 2000 - R5250".**

**This notification obviously upset shareholders such as "X". The payments on a quarterly basis commenced during March 2000.**

## **7. A committee of concerned investors**

**Metro experienced serious cash flow problems and the monthly, and later quarterly dividends, were discontinued. On 26 February 2000, 75 persons who invested in the liquidated Zuchiro, Metro shareholders and persons who loaned money to Holsthauzen in his personal capacity, held a meeting at the Holiday Inn Garden Court at the Johannesburg International Airport. The minutes of this meeting were made available to officials of the Committee. The purpose of the meeting was to "... ascertain valid reasons for the apparent impending collapse of the said group (Metro) with a view to restructuring where necessary to prevent insolvency and resultant loss of investors' capital and interest claims". It was minuted that 66 (88 per cent) of those present wished to "... salvage and grow the company under sound management". The following are some of the resolutions that were unanimously taken at the meeting:**

- (a) A number of shareholders would be appointed as committee members (the Metro committee) with immediate effect to ascertain the financial status of Metro.
- (b) Holsthauzen would require the written consent of the Metro committee before undertaking any expenditures of a capital nature. He would also not directly or indirectly initiate liquidation procedures whether in Metro's or his own names.
- (c) A Metro committee member would be appointed as a co-signatory of all cheques issued by Metro.
- (d) A "pruning" operation would be immediately instituted to ensure the closure of loss making branches.
- (e) All investors were to be treated equally and no interest payments or capital repayments were to be made before the Metro committee reported back to the investors by 20 March 2000. The investors were described as "... regardless of whether they purchased shares, or whether investments were lodged with Metro Cash Loans Limited, Metro Investments cc or C Holsthauzen".
- (f) An independent auditor would be appointed to investigate on behalf of the Metro committee and to report any irregularities in trading and assist in implementing the necessary financial controls.
- (g) Metro would operate "... according to the terms and conditions required by the Companies' Act".

Officials of the Committee met with members of the Metro committee at the offices of the Committee on 10 May 2000. They said that Holsthauzen unconditionally agreed with the resolutions taken at the meeting of investors but that he had yet to implement the resolutions. The "pruning" operation discussed above was obviously not possible because Metro's accounting system was not designed to identify profit earning or loss making branches.

#### 8. The meeting with the Committee on 14 April 2000 and subsequent events

Beswick and counsel for Metro attended a meeting of the Committee on 14 April 2000. Holsthauzen was not present at this meeting because he had to attend a funeral and the attorney was otherwise occupied. Beswick could offer no

explanation of the accounting procedures that were followed when money was paid into the Metro account for Holsthauzen's shares that were sold to the public. It was difficult for Beswick to answer any questions that were put to him about Metro and its procedures. It appeared that he was the managing director of Metro in name only and that he was not involved in the management of the company.

After the meeting with Beswick and counsel for Metro, the Committee resolved that a 8(1)(a) investigation be undertaken into the business practices of Metro Cash Loans Ltd, its directors and any employee, agent and/or representative of any of the aforementioned in respect of the activities of Metro Cash Loans Limited.

On 17 April 2000 an investigating officer of the Committee called Beswick and arranged to meet with him, Holsthauzen, the bookkeeper and/or auditor of Metro and any legal representatives the parties wished to have present on 20 April 2000. An attempt was made on 18 April 2000 to contact counsel for Metro in order to inform him of the Committee's resolution and the meeting scheduled for 20 April 2000. He was unavailable and he was only contacted on 19 April 2000.

A draft of the notice of the investigation was handed to him on 20 April 2000. He was told that the notice would probably be published in the Government Gazette of 5 May 2000, but that the publication thereof could be delayed to 12 May 2000 due to the many public holidays towards the end of April 2000 and the beginning of May 2000.

#### 9. The meeting at the offices of Metro on 20 April 2000

The meeting at the offices of Metro on 20 April 2000 was attended by Holsthauzen, Beswick, Metro's attorney and two investigating officers of the Committee. The bookkeeper was not available and Ms Strydom, the company secretary, attended the meeting for a short period in order to answer a number of questions about the accounting procedures followed by Metro.

In terms of section 7 of the Act, investigating officers may, *inter alia*, at all reasonable times, enter any premises on or in which any book, statement or document connected with a particular investigation is or is reasonably suspected to be, and may inspect or search those premises and examine any book, statement or document found. Investigating officers shall enter premises and exercise any powers in terms of section 7 only under a search warrant issued by a magistrate, unless the owner or person in charge of the premises concerned has consented thereto in writing.

Holsthauzen signed a document in the presence of his attorney confirming that the two investigating officers of the Committee presented him with their letters of appointment as investigating officers as well as their identity documents. He also

confirmed that he had read sections 7.3, 7.3A, 7.3B and 7.4 of the Act and that he consented to the investigating officials entering the offices of Metro and exercising any powers contemplated in subsection 7.3 of the Act without obtaining a search warrant. This consent applied for the duration of the investigation.

The unavailability of the bookkeeper at the meeting and at his offices in Benoni meant that certain questions could not be answered and the attorney undertook to arrange a meeting with the bookkeeper on 26 April 2000 or 28 April 2000. An official of the Committee called the attorney on 25 April 2000 and 26 April 2000 to confirm whether the meeting had been arranged. It appeared that the bookkeeper could not be contacted as he had taken advantage of the many public holidays towards the end of April 2000. Eventually it was agreed that a meeting take place on 9 May 2000.

#### 10. Publication of the section 8(1)(a) notice

The following was published under general Notice 1204 of 2000 in Government Gazette No 21133 dated 5 May 2000:

**"In terms of the provisions of section 8(4) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), notice is herewith given that the Consumer Affairs Committee intends undertaking an investigation in terms of section 8(1)(a) of the said Act into the business practices of -**

**Metro Cash Loans Limited, Christo Holsthauzen, (ID701002 5254 08 9), Zane Beswick (ID670920 5068 08 3) and any employee, agent and/or representative of any of the aforementioned in respect of obtaining loans for and the selling of shares in Metro Cash Loans Limited.**

**Any person may within a period of fourteen (14) days from the date of this notice make written representations regarding the above-mentioned investigation to:**

**The Secretary, Consumer Affairs Committee,  
Private Bag X84, PRETORIA, 0001.  
Tel: 012-310-9562, Fax: 012-320-0579.  
Ms L van Zyl [Ref. H101/20/10/14(2000)]".**

#### 11. The meetings held on 9 May 2000 and 17 May 2000

Officials of the Committee met with representative of Metro on 9 May 2000 and 17 May 2000. Both meetings were held at the offices of Metro in Springs. The first meeting was attended by Messrs W Roos, from the office of Metro's attorneys, N Meyer, the bookkeeper, Beswick, Holsthauzen and an investor nominated to

attend the meeting by the Metro committee. The bookkeeper did not hesitate to answer all questions put to him by the investigating officials in so far the accounting system made it possible. The accounting records were not up to date. A trial balance was not available and it could not be determined with certainty what amount was owed to investors.

In section 3 it was stated that Holsthausen/Metro undertook to service the approximately R4.1 million owed to Zuchiro investors, who received 10 per cent interest per month. The interest ledger indicated that from April 1999 to 2 February 2000 Metro paid R10.778 million in interest to these investors. This was evidently incorrect, because on the one hand, 10 per cent per month on R4.1 million for April 1999 to January 2000 should have been approximately the same amount as the capital invested, namely R4.1 million. On the other hand, if the interest paid was R10.778 million, the amount owed to Zuchiro investors was much more than R4.1 million.

It appears from handwritten documents which were made available by Ms Strydom, the company secretary, that the interest received by a number of investors exceeded the amounts invested by them. A certain D E Beswick, for example, invested R50 000, apparently on 17 December 1998, on which he/she earned R70 000 interest. The investor was also returned his/her investment of R50 000. The same investor also made an investment of R100 000 during October 1998, on which he/she received R165 000 interest. The investor has not yet received the initial investment of R100 000. It appears from these handwritten documents that Metro received money from investors up to 28 April 2000. On that day, an investor with the surname of Ramakhale invested R80 000 with Metro.

The officials requested certain information which was not available on 8 May 2000. They were assured that this information would be made available not later than 12 May 2000. It is important to note that it is neither required of investigating officials to conduct forensic audits of the entities investigated by them nor to establish whether fraud has been committed. They are required, in terms of section 7(3) of the Act, "... to ascertain whether this Act is being observed by any person to whom it applies, or to obtain any information required by the committee in relation to a preliminary investigation or an investigation by it in terms of this Act ...". In all investigations the officials have to report to the Committee whether unfair business practices exist or may come into existence.

The required information was not available on the date promised and the bookkeeper told an official of the Committee that he does not intend updating the books unless he is paid the fees due to him. The consequences of Metro's cash flow problems now became more profound. On 17 May 2000 the electricity supply to the Metro offices was discontinued.

Officials of the Committee again met with Holsthauzen and Bezwick on 17 May 2000. An investor handed a copy of a paid cheque to officials. This cheque, made out to C Holsthauzen, was for R400 000. The investor said that he was requested by Holsthauzen to draw the cheque in his (Holsthauzen's) favour. It appears from a cursory inspection of Holsthauzen's personal bank statements that cheques were made out in his favour by investors on a number of occasions. This was readily confirmed by him. It is also clear from a cursory inspection of copies of Metro deposit slips that Holsthauzen did not deposit the amounts he received in this fashion into Metro's bank account. He said that there was no need to deposit the funds thus received into the Metro account because he often paid Metro's overheads and at times also the interest due to investors. There is, without any doubt, a commingling of Holsthauzen's and Metro's funds. Metro uses seven light bakkies to collect from and take cash to the branches. These bakkies are leased by Holsthauzen in his personal capacity. The same applies to a number of offices from which the branches operate.

Holsthauzen alleged that the investor concerned said that he (the investor) told him that he would prefer, for "tax reasons", to draw the cheque in Holsthauzen's favour. The cash loan business is exactly what the name conveys. Clients of these businesses receive the money that they borrow in cash and they invariably redeem the loans also in cash. If an investor were to receive his/her interest in cash, there could be a temptation to withhold this source of income from the South African Revenue Services.

A serious implication of the commingling of Holsthauzen's and Metro's funds was that the figures reflected in Metro's books of account could not reflect the correct financial position of Metro, even if they were kept up to date.

Bezwick wanted to know from the officials what they (Holsthauzen and himself) were guilty of. The enabling nature of the Act was again explained to him. It was explained to him, for example, that the Metro advertisements probably misled consumers and that the manner in which the share price was fixed (literally) could have unreasonably misled investors. It was put to Holsthauzen and Beswick that the share price of R1 was a figure arrived at without any basis or justification whatsoever. Both agreed with the statement that the selling price of R1 per share was fabricated. Prospective consumers who were interested in buying shares were not presented with any financial figures. They did not know whether Metro was profitable or solvent. They were interested only in the lucrative yield on their investments promised to them by Metro, Holsthauzen and Bezwick.

## 12. Meetings with members of the Metro committee

Officials of the Committee again met with members of the Metro committee at a conference centre in Springs on 17 May 2000 and at the Metro offices on 29 May

2000. Holsthauzen and Bezwick were present at the meeting on 17 May 2000 and Holsthauzen attended the meeting on 29 May 2000 for a short period.

At the meeting on 17 May 2000 an official of the Committee explained section 9 of the Act to those present. If it were possible for Metro and the Metro committee to come to an agreement, the terms of this agreement could perhaps serve as basis for an arrangement in terms of section 9 between the Minister and Metro.

The meeting of 29 May 2000 was also attended by legal representatives of Metro and the Metro committee. An official of the Committee briefed those present about certain opinions that were expressed by members of the Consumer Affairs Committee when Metro was discussed at the Committee's meeting on 25 May 2000. Holsthauzen signed a document in which he surrendered 17 million of his shares in Metro. He is thus no longer the majority shareholder. The legal representatives were to sort out at a later stage whether the shares were to be distributed among the investors, whether they should revert to the company or whether they should be registered in the name of a trust to be established. The Metro committee was invited to make written representations regarding the investigation into the business practices of Metro, Holsthauzen and Bezwick.

The officials' general impression was that a number of large investors were considering investing more money in Metro because the business was "inherently" profitable and if there was a "glimmer of hope" that the life savings, and indeed the livelihood, of some investors could be saved, the opportunity should be grasped.

### 13. Possible contraventions

#### 13.1 Notice 1135 of 1999: Multiplication schemes

On 9 June 1999 money revolving schemes, which include multiplication schemes, chain letters and pyramids promotional schemes, were declared harmful business practices by the Minister in terms of the former Harmful Business Practices Act, 71 of 1988 (the former Act). The order of the Minister followed from a section 8(1)(b) investigation into money revolving schemes.

The promoters of multiplication schemes invariably claim that money invested by "investors" with them could be "multiplied" a certain number of times within a specific time, such as "... multiply your money by 5 in 24 hours" or "... multiply your money by 3 in 14 days". The Metro share offer to the public is a multiplication scheme, because it stated implicitly that a shareholder's investment could be multiplied by 1.525 times in a year's time. The advertisement copied in section 5 stated that R40 000 will grow to R61 000 after 12 months and R40 000 times 1.525 is R61 000.

The order of the Minister states that it is a harmful business practice, in terms of the former Act, to offer or promise or guarantee an effective annual interest rate of 20 per cent and more above the REPO rate, as determined by the South African Reserve Bank, to any investor, whether or not the investor becomes a member of the lending entity. The applicable REPO rate is that which applied at the date of the investment. The effective annual interest rate is:

$$r = \frac{R \times 1200}{C \times T}, \text{ where: } r = \text{the effective interest rate,}$$

R = the interest in rand, which is the difference between the amount paid out to the investor and the amount invested,

C = the amount invested by the investor or any amount paid by a person to become a member of a scheme, and

T = the period of the investment in months.

The effective interest rate, applied to the advertised offer by Metro, was 55 per cent. On 9 June 1999 the Repo rate was 15.375 per cent (see Money Market Accommodation, Selected daily indicators, Quarterly Bulletins of the South African Reserve Bank, September 1999, December 1999 and March 2000) and since then there has been a steady and continuous decline in this rate and it is now (15 May 2000) 11.75 per cent. Thus, since 9 June 1999 Metro offered or promised or guaranteed an effective annual interest rate of 20 per cent and more above the Repo rate, as determined by the South African Reserve Bank, and in the process transgressed the order of the Minister. This report will be brought to the attention of the Commercial Crime Unit of the South African Police Services.

### 13.2 The Companies Act, 1973 (Act No 61 of 1973, as amended)

It is possible that various sections of the Companies Act, 1973 (Act No 61 of 1973, as amended) have been transgressed by Metro, Holsthauzen and Bezwick. For example, it is stated in section 85 of the Companies Act that: "The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company". Dividends, or rather, interest in the guise of dividends, were paid to investors and at no stage did Holsthauzen and Bezwick have figures, in the form of interim financial statements or management accounts, at their disposal to confirm that Metro had indeed made a profit. There is a strong possibility that Metro traded while being technically insolvent. This report will also be brought to the attention of the South African Companies Registration Office.

### 13.3 Fraud

A number of investors claimed that Holsthauzen, and certain other persons closely associated with him, siphoned huge cash amounts from Metro. These investors were advised to lay charges of fraud against the persons concerned at their nearest police station.

### 14. Consideration

The advertisements placed by Metro were aimed at those consumers who were retired, those who were contemplating retirement, those who were retrenched and those who have been retrenched. This is clear from the words "*Are you going on retirement?*" and "*Have you been retrenched?*" in the copy of the advertisement reproduced in section 5. The attention of these consumers was further captivated by the promised monthly income and the statement that the shares could later be sold for the same amount that they were bought for.

The advertisement was designed to mislead potential investors. For example, the statement "These shares can be sold for the same amount you bought them for" is extremely misleading. No person or company can make such a claim and in the case of Metro, the misrepresentation is exacerbated because of the limited scope to sell the shares of an unlisted company. The phrase "Limited amount of shares available" conveyed the message that a firebrand sale was being held and that latecomers would be left wanting of a once in a lifetime opportunity.

There can be no doubt that consumers who responded to the advertisements were misled and that the relations between them and Metro were harmed. There are obviously also those investors, probably a small minority, who invested in Metro with one eye on the interest income in cash and the other eye on the prospect of paying a reduced income tax.

Although Metro implemented an accounting system, the figures reflected therein were of limited use because of the commingling of Holsthauzen's and Metro's funds. Holsthauzen managed Metro. He did so without knowing whether Metro was profitable or solvent. The absence of an operational accounting system and commingling of the affairs and funds of Holsthauzen and Metro meant that Holsthauzen, and Bezwick for that matter, had no means of understanding and appreciating the financial status of Metro and the various cash loan branches. These factors were extremely prejudicial to all Metro investors.

Holsthauzen and Bezwick knew that Metro experienced cash flow problems and they probably knew that Metro was not profitable. They were aware of this, probably not later than February 2000, because Metro/Holsthauzen did not have funds available

to place more advertisements. Yet, they accepted investments by investors (victims) at least up to 28 April 2000. These investors were unreasonably prejudiced by Metro, Holsthauzen and Bezwick.

Were it not for the efforts of the Metro committee, the officials would have recommended to the Consumer Affairs Committee that the Committee recommend to the Minister, in terms of section 12(1)(b) of the Act, to take steps for the dissolution of Metro and that a curator be appointed, in terms of section 12(1)(d) of the Act, to limit the financial losses of the majority of investors.

It would, however, probably be inappropriate for the Consumer Affairs Committee to recommend to the Minister that Metro should be closed down when a group of investors, consisting of creditors and minority shareholders, are considering ways to save the company. The appointment of a curator would not be cost effective because it appears that Metro does not possess any significant assets.

#### 15. Recommendation

The Committee informs the Minister that, in its opinion, the business practices of Metro Cash Loans Ltd (99/06083/06), Christo Holsthauzen (ID701002 5254 08 9) and Zane Beswick, (ID670920 5068 08 3) constitute unfair business practices. There are no grounds justifying the practices in the public interest. It is accordingly recommended that the Minister under section 12(1)(b) and (c) of the Consumer Affairs (Unfair Business Practices) Act (Act No. 71 of 1988) -

- (i) declares unlawful the business practice whereby -
  - (a) Metro Cash Loans Ltd and/or Christo Holsthauzen and/or Zane Beswick, in the course of business, directly or indirectly invite any consumer (investor) to make any type of investment in any entity, unless the investor signs a document which clearly states that the investor received audited financial statements of that entity, as at a date not exceeding three months prior to the investor making the investment.
  - (b) Christo Holsthauzen, in the course of business, accept any investment from any consumer in any entity in his personal name and/or any investment in any entity is credited to any of his personal accounts held at any financial institution.
- (ii) directs Metro Cash Loans Ltd, Christo Holsthauzen and Zane Beswick to refrain from applying the unfair business practice.

**“Audited financial statements” means a balance sheet, an income statement and a cash flow statement verified by a chartered accountant who is registered with the Public Accountants and Auditors Board in terms of the Public Accountants' and Auditors' Act, No 80 of 1991.**

**PROF T A WOKER**

**VICE-CHAIRPERSON: CONSUMERS AFFAIRS COMMITTEE**

**23 June 2000**

**NOTICE 3107 OF 2000****DEPARTMENT OF TRADE AND INDUSTRY****CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988**

I, Alexander Erwin, Minister of Trade and Industry, after having considered a report by the Consumer Affairs Committee in relation to an investigation of which notice was given in Notice 1024 of 2000 published in Government Gazette No. 21133 of 5 May 2000, which report was published in Notice 3106 in Government Gazette No. 21546 of 15 September, 2000, and being of the opinion that an unfair business practice exists which is not justified in the public interest, do hereby exercise my powers in terms of section 12(l)(b) and (c) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), as set out in the Schedule.

**A ERWIN**  
**MINISTER OF TRADE AND INDUSTRY**

**SCHEDULE**

In this notice, unless the context indicates otherwise -

"unfair business practice" means the business practice whereby the

(i) parties, in the course of business, directly or indirectly invite any consumer (investor) to make any type of investment in any entity, unless the investor signs a document which clearly states that the investor received audited financial statements of that entity, as at a date not exceeding three months prior to the investor making the investment and

(ii) party, in the course of business, accepts any investment from any consumer in any entity in his personal name and/or any investment in any entity which is credited to any of his personal accounts held at any financial institution.

"Audited financial statements" means a balance sheet, an income statement and a cash flow statement verified by a chartered accountant who is registered with the Public Accountants and Auditors Board in terms of the Public Accountants' and Auditors' Act, No 80 of 1991.

"the parties" means Metro Cash Loans Ltd (99/06083/06), Christo Holsthauzen (ID701002 5254 08 9) and Zane Beswick, (ID670920 5068 08 3).

"the party" means Christo Holsthauzen (ID701002 5254 08 9).

1. **The unfair business practice is hereby declared unlawful in respect of the party and the parties.**
  2. **The party and parties are hereby directed to -**
    - (a) **refrain from applying the unfair business practice;**
    - (b) **cease to have any interest in a business or type of business which applies the unfair business practice or to derive any income therefrom; and**
    - (c) **refrain from at any time applying the unfair business practice.**
  3. **This notice shall come into operation upon the date of publication hereof.**
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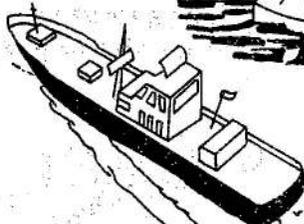
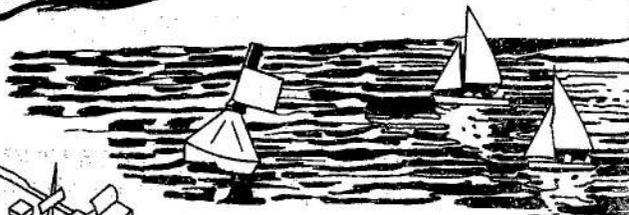
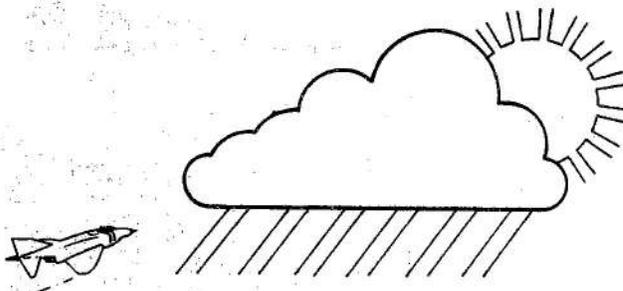
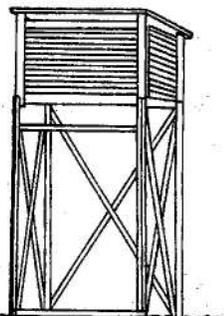
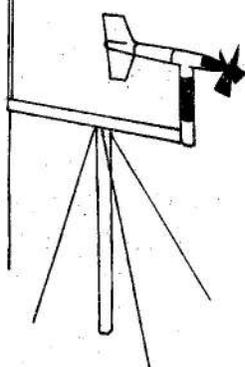
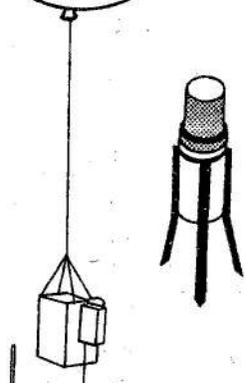
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